IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 501 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHIMA NAGA CHAVDA AND OTHERS

Versus

STATE OF GUJARAT

Appearance:

MR KB ANANDJIWALA for Petitioners

MR AJ DESAI, APP for Respondent No. 1

MR YS LAKHANI for Original Complainant.

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 19/01/2001

ORAL JUDGEMENT

1. Rule. Service of rule is waived by Shri A.J.Desai, learned APP for the respondent No.1-State and

Shri Y.S.Lakhani, learned counsel for the respondent No.2-original complainant.

2. Khima Naga Chavda - petitioner original accused and other five accused have filed this Criminal Revision Application under Sec.397 read with Sec.401 of the Code of Criminal Procedure, 1973, (hereinafter referred to as `Code') challenging the judgment and order dated 23rd October, 2000, passed by the learned Additional Sessions Judge, Jamnagar, in Sessions Case No.45 of 2000 and Sessions Case No.58 of 2000 below chargesheet Exh.1 and Exh.6. The learned Sessions Judge by his judgment and order pleased to issue chargesheet against the accused under Sec.302, 307 and 120-B of the Indian Penal Code.

3. The facts giving rise to this application are as under:

3.1 That one Jasabhai Savdas Dathalia (first informant) filed his FIR on 2.9.1999 before Jamkhambhalia Police Station against the petitioners for the offences under Secs.279, 304-A and 337 of IPC and also under Sec.184 and 177 of the Motor Vehicles Act. The same was registered as C.R. No.I - 159 of 1999 at Jamkhambalia Police Station. According to the first informant himself, he along with others were travelling in Maruti Car on 2.9.99 at about 8.30 a.m. in the morning and just they were at a distance of about half a kilometer from Kuvadia an accident took place with truck which took place on the highway. The truck was coming from the opposite direction with high speed, dashed with the Maruti Car. The persons who were sitting in the maruti car sustained injuries and were removed to Jamkhambalia for treatment. Aala Nathu and Dadu Vira (passenger in maruti car) sustained serious injuries and, therefore, they were removed to G.G.Hospital at Jamnagar. The petitioners in the petition alleged that after 8 days, an incident of accident was converted into the murder. The report was submitted for substituting the offence by adding offences under Secs.302, 307 read with Sec.120-B IPC and the learned JMFC added those sections.

3.2 It was further alleged that from 8.9.99 the investigation was taken charge of by Senior PSI and he brought absolutely new story that the incident which took place on 2.9.99 at about 8.30 a.m. was not a case of an accident but it was a case of murder and conspiracy to commit murder. The police therefore recorded number of statements of the witnesses and they came out with the say that after the death of the victim during Besna number of relatives and other persons came to their place

and at that time it was suspected that on a previous day in the evening a truck was stationed outside the Retrading Factory of one of the accused persons during midnight hours at 1.00 a.m. and about 4 to 5 persons were sitting talking inter-se at the relevant time. The colour of the truck was not noticed nor the number could be noted. It was further alleged that another story that was suspected was that on a previous day at 1.00 a.m. during night hours Khima Naga Chavda and his brothers Ebha and Lakhman Ramshi and Dadu Karna hatched a conspiracy alongwith the father-in-law of Khima Naga resident of Fatehpura and in furtherance of that conspiracy the help of Devshi Rama was solicited as he happened to be a friend of Dadu Arshi by instigating him. It was further alleged that during the course of statements which were recorded on 8.9.99 it was stated that on a previous evening Devshi Rama had been put up at the residence of Khima Naga in his Bharadia and at about 1.00 a.m. they were seen at the residence of Khima Naga. This was stated for the purpose of showing that a conspiracy was hatched during the night hours at the residence of Khima Naga at Retrading Factory of one of the accused persons.

3.3 In the petition it was further alleged that another story which has been introduced in a belated statement that on the date of the incident in the morning when they were leaving for going to the police station as two accused persons were arrested by the police on a previous day. When they left their houses on different vehicles, one of the accused went ahead on Hero Honda motorcycle when maruti car and other vehicles on the outskirt of the village going towards Khambalia a truck came out on the road from left side of the road and he speeded the vehicle and thereafter a show had been made that an accident had taken place.

3.4 In the petition it was further alleged that another aspect which has been brought on record is that there were long standing enmity between the complainant party and the accused party and before about 12 years in one murder case some of the accused were arrested by the police and they had to remain in jail for about one year and thereafter in trial they were acquitted. One year thereafter it is further the case put up that one person on the accused side was murdered. However, it was also brought on record that since last 7 years complete peace was prevailing and no quarrel of any nature had taken place. From the chargesheet papers the statements which have been recorded are more or less of a hearsay nature and they are stating only on suspicion that it might be a

case of murder.

3.5 In view of the same, accused Devshi Rama filed an application on 10.10.2000 before the learned Sessions Judge, Jamnagar, and stated that against him only offence which has been committed is under Sec.279, 304-A of the Indian Penal Code and Sec.144, 177 of the Motor Vehicles Act, and he is wrongly involved in the offence of murder and, therefore, he has prayed for a new charge and he may be discharged for the offence of murder and a charge may be created under Sec.279, 304-A of the IPC and Sec.144 and 177 of the Motor Vehicles Act read with Sec.228 of the Code. That application was heard by the learned Sessions Judge, Jamnagar. The learned Sessions Judge by his judgment and order dated 23rd October, 2000, after considering the evidence on record i.e. statements of witnesses, panchnama and other case on record, came to the conclusion that offences under Secs.302, 307 and 120-B of the IPC are alleged against the accused in this behalf.

3.6 Being aggrieved and dissatisfied with the aforesaid judgment and order of the learned Sessions Judge, the present revision application is filed by the petitioners in this behalf.

3.7 When the aforesaid revision application has been placed before this Court, this Court (Coram: H.H.Mehta,J.) dated 6.12.2000 passed the following order:

> "Notice returnable on 13.12.2000. Service of notice is waived by Mr.B.Y.Mankad, learned APP for the revision-opponent/respondent. Mr.Mankad, ld.APP is directed to keep the Investigating Officer present before this Court with the relevant papers of investigation on the next date fixed. Interim relief in terms of Para 5 (iii) till then."

4. Mr.K.B.Anandjiwala, learned counsel for the petitioners submitted that the order passed by the learned Sessions Judge, Jamnagar, is absolutely errorneous, illegal and unwarranted on facts and circumstances emerging from the chargesheet papers. He submitted that the learned Sessions Judge has completely misread the statements of witnesses and the learned Judge has also committed mistake by taking shelter of conjectures and surmises. The basic principles of appreciation of evidence has been lost sight of by the learned Judge and therefore the order passed by the learned Judge is even otherwise illegal. He further

submitted that the learned Judge has completely ignored the scene of offence panchnama. He further submitted that from the circumstances mentioned in the panchnama it is suggestive of the fact that it was a case of an accident only and not a case of murder. He further submitted that even the theory of an accident is supported by the first informant and other witnesses as the first informant lodged FIR for the offence under sec.304-A and at the time of his further statement when the FIR was read out to him, he said that whatever stated in it is true and therefore case of an accident is more probable. He further submitted that in further statement whatever he has stated that is only a hearsay evidence and the other witnesses have stated the parrot like version by introducing a new story only on suspicion.

4.1 Mr. Anandjiwala, learned counsel for the petitioners has cited the judgment of the Apex Court in the case of State of Karnataka Vs. L. Muniswamy and others reported in 1977 Cri. L.J. 1125. In para 7 of the said judgment the Hon'ble Supreme Court has observed as under:

> "In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution."

4.2 He has also relied upon the judgment of the Apex Court in the case of Satnam Singh Vs. State of Rajasthan reported in 2000 Cri. L.J. 584. In Para 5 of the said judgment the Apex Court has observed as under:

> "The crucial question that arises of consideration however is whether the materials produced by the prosecution establishes the fact that the accused intentionally dashed against the scooter of the deceased and crushed over the deceased at the relevant point of time."

In Para 5 at page 587 of the said judgment after considering the evidence the Apex Court has observed as under:

"It is difficult to hold that a case of murder by intentionally driving the vehicle at a high speed and then crushing over the deceased by the truck can be said to have been made out beyond reasonable doubt."

4.3 Learned Counsel for the petitioners submitted that in this case the accused has stated that he should be discharged for the offence under Sec.302 of IPC and to that extent he has filed an application before the court and that application was filed on 10th October, 2000. In that application, it was stated that offence under Sec.304 of IPC can be levelled against him but not under Sec.302 of IPC. For that purpose he has relied upon the judgment of Allahbad High Court in the case of Kanhaiya Vs. Kashi Nath Tewari and others reported in 1979 Cri. L.J. 409. He has also relied upon the judgment of the Bombay High Court in the case of Baburao Hari Pawar Vs. State of Maharashtra reported in 1987 Cri. L.J. 584, wherein principle of Sec.227 of the Code has been considered.

4.4 He further submitted that on bare perusal of the chargesheet papers, prima facie it is borne out that it was a case of accident and in any case it was not a case of murder and conspiracy and, therefore, he submitted that the petitioners accused are required to be discharged from the trial and the order passed by the learned Sessions Judge be quashed and set aside.

5. Shri A.J.Desai, learned APP for the respondent No.1-State has try to support the reasonings given by the learned Sessions Judge in his judgment dtd.23rd October, 2000. Shri Y.S.Lakhani, learned advocate for the original complainant has also try to support the case of the prosecution in this behalf.

6. Shri A.J.Desai, learned APP for the respondent No.1-State as well as Shri Y.S.Lakhani, learned counsel for the respondent No.2 have invited my attention to the complaint filed in this behalf, panchnama which was prepared regarding scene of offence dated 3rd September, 1999. He has also prepared rough sketch of the vehicle which was stationed. Learned APP Mr.Desai has submitted that in this case the Maruti Car was going from Dwarka to Khambalia i.e. from West to East whereas Truck was coming from Khambalia to Dwarka in opposite direction from East to West. The width of the road is 20 feet and on the northern side of the road there is a sim of Kuwadia and on the south side it was open plot. After going through the panchnama very carefeully, learned

counsel stated that the truck was going with great speed and it was not only rash and negligent but the truck went to the kachcha road and thereafter it went upto ditch which approximately about 6 to 7 feet away on the kachcha road. That shows that the truck driver was not only rash and negligent but he has intention to see that the passenger in the Maruti Car may suffer extensive injury or may result into death. Learned counsel thereafter has also shown me the photographs of the scene of offence. He has invited my attention to the fact that there was brake mark as well as other marks on the road because of truck was going with the great speed on the road. The panchnama shows that the mark of the brake and some of the marks are also shown in the photographs by which truck went it to its wrong side on kachcha road and went upto ditch. The maruti car is completely broken and the car is not in a position to again repairable. The 1st photograph shows the position of truck and maruti car. The 2nd photograph shows the position of maruti car and truck. The 3rd photograph shows the position of extensively damaged to the maruti car. The 4th photograph shows that the truck not only went up to the kachcha road but it has gone upto ditch and its frontwheels were already removed. The 5th photograph shows the position of the truck which shows the right side of the truck. The 6th and 7th photograph show the position of the left side of the truck. Shri B.N.Vaghela, PSI of Jamkhambalia Police Station has also brought relevant papers in this behalf including photographs and panchnama. In the panchnama it is also mentioned that maruti car was damaged by Rs.1.00 lakhs whereas truck was damaged Rs.40,000/-.

6.1 Learned counsel has also relied upon the statement of Naranbhai Sambhabhai Devaria who has stated regarding previous enmity between the parties and also try to depict the scene of offence in this behalf. He has stated that when the truck driver saw the maruti car the truck driver has intentionally accelerated speed of the truck and try to damage the maruti car intentionally and because of that accident occurred. After the accident the truck driver lost the control over the truck in this behalf. Learned counsel has also relied upon statement of Jaga Nathubhai Desaria, who has stated about the previous enmity and scene of offence. He has also relied upon the statement of Sajan Nathu Devaria, who has also narrated about the previous enmity between the parties. He has also relied upon statement of Rama Sevdas Devaria, who has also stated about the past enmity and stated that this was not accident but because of previous enmity the truck driver and other passengers has

try to kill the passenger of maruti car and they have made a show of an accident only. He has also relied upon the statements of Rama Vajsi Bhatia, Nagabhai Nathubhai Devaria, Mesri Nathubhai Detharia and Muru Giga Modhvadia.

6.2 Learned counsel has also relied upon the order of the learned Sessions Judge dated 23rd October, 2000, where the learned Sessions Judge also considered the statements and other materials on record and other relevant case law and also considered the previous enmity and a conspiracy hatched between truck driver and other passengers of the truck and because of that the learned Sessions Judge has held that there are sufficient materials to frame charge under Secs.302, 307 read with Sec.120-B of the IPC against the accused. Learned counsel submitted that there was clear intention on the part of the truck driver and other passengers who were in the truck to intentionally cause death of the passengers of the maruti car and, therefore, the truck driver was not only driving rash and negligent manner but he was driving rashness in criminal negligence on the part of the truck driver and he has made only show of accident but the photographs and the panchnama clearly reveals that he had a clear intention to inflict injury directly and wilfully to the passengers of the maruti car and with a clear intention to cause death of the passengers of the maruti car.

6.3 Shri Y.S.Lakhani, learned counsel for the original-complainant respondent No.2 has also relied upon the judgment of the Delhi High Court in the case of Sanjiv Nanda Vs. State reported in 1999(3) Crimes 385. The Delhi High Court considered Sec.304(A), 299 and 300 of the IPC. The Delhi High Court in Para 14 has held as under:

"Putting it shortly all acts of killing done with the intention to kill, or to inflict bodily injury likely to cause death, or with the knowledge that death must be the most probable result, are prima facie murder. While those committed with the knowledge that death will be a likely result are culpable homicide not amounting to murder. Intention is a subjective element and in most of the cases direct proof of intention is not forthcoming. It has been rightly said that "the devil himself knows not the thoughts of man." From the facts of a man's doing an act with the knowledge that he is likely to cause death, it may be presumed that he did it with the intention of causing death, if all the

circumstances of the case justify such a presumption."

In the paragraph after considering the judgment of the Apex Court in the case of Anda and Others Vs. The State of Rajasthan reported in AIR 1966 S.C. 148 and also another judgment in the case of State of Madhya Pradesh Vs. Ram Prasad reported in AIR 1968 S.C. 881. In Para 17 and 18 the Delhi High Court in Sanjiv Nanda's case (supra) has observed as under:

"Every grown up man is presumed to know the natural and probable consequences of his own acts. The mere fact that the accused had no deliberate intention of killing any particular individual would not take the case outside Clause 4thly of this section where he had no excuse for running the risk. Apart from other circumstances the act of the petitioner in driving away the car after getting down and seeing some injured persons were entangled under his car and crying for life and still dragging them, was not only imminently dangerous, but also too cruel and callous. Apparently, the petitioner had not heeded to the cries of the injured to stop the car there itself and rather drove the car dragging them. This circumstance, inter alia, may take the case out of Section 304-A, IPC and also Section 304, IPC and might amount to murder under Section 300, IPC.

6.4 Learned counsel therefore submitted that in this case also the cumulative effect of reading the panchnama alongwith photographs clearly reveals that there was clear intention on the part of truck driver Devshi Rama petitioner accused No.6 herein.

7. I have considered the FIR, panchnama, statements of witnesses, photographs, the order of the learned Sessions Judge, submission of the learned Counsel for the petitioners Shri Anandjiwala and also submissions of learned APP Shri A.J.Desai and learned advocate Shri Y.S.Lakhani for the original complainant and also the findings of the learned Sessions Judge. In my view, I do not see any reason to interfere with the order of the learned Sessions Judge when learned Sessions Judge has rightly come to the conclusion that charge against the accused can be levelled under Secs.302, 307 and 120-B of IPC. In my view, the learned Judge has properly exercised his discretion in this behalf and the learned Sessions Judge has given very cogent and convincing reasons for the same. I do not find any infirmity in the

order of the learned Sessions Judge and, therefore, in view of Sec.397 of Code, there is no justification to interfere with the order of the learned Sessions Judge. Therefore, this Criminal Revision Application is deserves to be rejected and accordingly it is rejected.

8. The learned Additional Sessions Judge, Jamnagar, shall follow the order of the Apex Court in the case of Criminal Misc. Petition Nos.6559,7043,7044 & 6560 of 2000 dated 7th December, 2000, where the Apex Court has passed the following order:

"Permission granted.
Delay condoned.
Issue notice returnable in eight weeks.
Pending hearing of this Petition, the trial Court is directed to expedite the trial as directed by the High Court."

When the said matter was further heard on 2nd January, 2001, the Apex Court has passed the following order:

"Learned counsel for the petitioner submits that despite the specific order passed by this Court as well as the High Court for expeditious hearing of the Sessions Case, the Sessions Court is not in a position to proceed with the trial because of non-cooperation by the accused. Considering the aforesaid submission we direct the Sessions Judge, before whom the matter is pending to expedite the trial and to send a status report to this Court within four weeks from today and also to see that if there is non cooperation by the accused to take appropriate action against them under the Code of Criminal Procedure, including the issuance of non-bailable warrants. The matter stands over for four weeks."

9. In view of the discussion made hereinabove, this Criminal Revision Application is rejected. Rule is discharged. Interim relief granted on 6.12.2000 by this Court (Coram:H.H.Mehta, J.) staying the judgment and order dated 23rd October, 2000, passed by the learned Sessions Judge, Jamnagar in Sessions Case No.45/2000 and 58/2000 is vacated. The learned Additional Sessions Judge, Jamnagar, will proceed further with the Sessions Case No.45/2000 and 58/2000 in accordance with law, immediately as there is already direction/orders dated 7.12.2000 and 2.1.2001 Hon'ble the Supreme Court to dispose of the case at an early date.

(K.M. Mehta, J.)

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